

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of

Amendment of Parts 73 and 74 of the Commission's)	MB Docket No. 03-185
Rules to Establish Rules for Digital Low Power)	
Television, Television Translator, and Television)	
Booster Stations and to Amend Rules for Digital Class)	
A Television Stations)	

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Cellular South, Inc., d/b/a C Spire Wireless ("C Spire") opposes The National Translator Association's ("NTA") August 25, 2011, Petition for Reconsideration ("Petition") in this proceeding. As shown below, the Petition is largely moot. Moreover, NTA has simply not shown why low power television stations and television translator stations should be allowed to remain indefinitely on out-of-core television channels, where their existence hinders 700 MHz wireless licensees in constructing their facilities.

I. Introduction.

NTA seeks reconsideration of paragraphs 23-35 of the Commission's July 15, 2011, *Second Report and Order* in this proceeding, FCC 11-110 ("*Second R&O*"). The *Second R&O*, inter alia, required low power television ("LPTV") stations and TV translator stations operating on TV channels above 51 (so-called out-of-core TV channels) to cease operation by December 31, 2011. The *Second R&O* also set a

deadline of September 1, 2011, for those stations to file a displacement application to operate on an in-core TV channel (TV channels 2-51).¹

NTA argues that the result of the September 1, 2011, application deadline, and the requirement to cease operation on out-of-core channels by December 31, 2011, will be to deny TV service to members of the public. Petition at 2. NTA asserts that its members have had difficulty finding in-core TV channels and additional difficulty in financing the equipment necessary to move to an in-core TV channel. Petition at 3. NTA also claims that the current process whereby 700 MHz licensees, who now have primary status on former TV channels 52-69, may require LPTV and TV translators to vacate their out-of-core channels upon 120 days notice, is working and that the wholesale vacation of former TV channels 52-69 is therefore unnecessary. Petition at 4. Finally, NTA asks the Commission to allow its staff to waive the December 31, 2011 date “in appropriate circumstances.” *Id.*

¹ Several other parties filed petitions for reconsideration of other aspects of the *Second R&O*. See Petition for Reconsideration of Hammett & Edison, Inc. (August 9, 2011); Petition for Reconsideration and/or Clarification (August 5, 2011) filed by the law firm of Cohn and Marks; Petition for Reconsideration (August 26, 2011) filed by National Public Radio; Petition for Reconsideration (August 26, 2011) filed by Signal Above LLC. C Spire takes no position on these petitions, which do not implicate television operation outside core TV channels.

Two other filings were made by the August 26, 2011 petition for reconsideration deadline. Voyageurs Comtronics Corporation on behalf of a number of northern Minnesota TV translator site owners and Lake of the Woods County, a northern Minnesota TV translator operator, both seek relief from the September 1 and December 31, 2011 deadlines for out-of-core television translator licensees whose in-core applications have been dismissed as a result of Canadian objections. Because C Spire has no 700 MHz facilities in the northern Minnesota area, it takes no position on those two requests, but notes as discussed below, that the Commission retains the ability to grant a waiver in exceptional circumstances where justified in the public interest.

II. NTA's Petition for Reconsideration Should Be Denied.

C Spire opposes NTA's Petition. C Spire is the nation's largest privately-held wireless carrier. It currently provides wireless services to more than 850,000 customers throughout Mississippi and in portions of Alabama, Tennessee and Florida. Through its subsidiary, Cellular South Licenses, LLP, it holds licenses to operate Lower 700 MHz wireless systems, and is working diligently to acquire the equipment necessary to build out a 4G LTE network on those licenses. In effecting its build-out, it could face potential interference, inter alia, from out-of-core LPTV and TV translator facilities. It therefore has a substantial interest in the outcome of this proceeding.

Initially, C Spire notes that the NTA Petition is largely moot. The September 1, 2011 deadline for LPTV and TV translator stations to file a displacement application to move to an in-core channel has come and gone. Although NTA requested stay of that date, the Commission denied a stay on August 11, 2011. *See* DA 11-1375. Thus, those stations failing to meet the September 1, 2011 deadline to apply for an in-core channel have forfeited their right to apply for an in-core channel.

LPTV and TV translators have had more than a decade to move to in-core channels. The FCC reallocated TV Channels 60-69 in 1997. *See Reallocation of Television Channels 60-69, the 746-806 MHz Band*, 12 FCC Rcd 22953 (1997) ("*Channel 60-69 Reallocation Order*"). And the Commission reallocated TV Channels 52-59 in 2001. *See Reallocation and Service Rules for the 698-746 Spectrum Band (Television Channels 52-59)*, 17 FCC Rcd 1022 (2001) ("*Channel 52-59 Reallocation*").

Order”). The reallocation of this spectrum was driven by the need for additional spectrum to accommodate the public’s intense demand for wireless service.

Nevertheless, the Commission has been extremely accommodating to LPTV and translator operators, allowing them to continue to operate on out-of-core channels. *See Channel 60-69 Reallocation Order, supra; Channel 52-59 Reallocation Order, supra.* The Commission also allowed LPTV and television translator stations the opportunity to file for digital companion channels, as it had done with full service television stations.² All of these concessions were designed to ease the transition of LPTV and TV translator stations to in-core digital channels.

The time for that transition has now come. Given the time LPTV and TV translators have had to transition to in-core channels, the equities hardly favor further accommodation to licensees that have failed to exercise even the slightest degree of diligence over the past 10 years to find and apply for an in-core TV channel.

NTA argues that even in the absence of reasonable diligence by its member licensees that the public interest in continued service should trump the need for clearing the out-of-core TV channels. Denial of public service is always a consideration. However, if loss of service should be considered to trump licensee due diligence, then the Commission’s rules and authority would be rendered largely meaningless.

Moreover, NTA fails to provide any evidentiary support for its claim that television service to the public will suffer from the December 31, 2011, cutoff date. NTA

² *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, 19 FCC Red 19331, 19376, 19379 & 19383 (2004).

fails to identify how many LPTV or translator stations would be (now were) unable to meet the September 1, 2011 date for filing in-core applications, nor how many out-of-core stations would be unable to move to in-core channels by end of the year. Likewise NTA fails to identify any segment of the public that is likely to be denied television service by implementation of the December 31, 2011, date for stations to cease operation outside the core TV channels.

To the extent there are truly exception situations where public service would indeed suffer, C Spire agrees that the staff should be able to consider waivers. *See* Petition at 4. However, we note that such waivers should only be granted in extraordinary cases where licensees have acted with due diligence and have been frustrated by circumstances beyond their ability to control and where public service truly would suffer. NTA's Petition has not shown that such conditions exist on any substantial scale.

NTA's claim that some licensees have had difficulty making upfront payments for equipment, though regrettable if true, does not justify elimination of the December 31, 2011, cutoff date. Petition at 3. It does not explain why licensees that have had 10 plus years to seek an in-core channel have been unable throughout that period to obtain financing; and it does not explain how such licensees would be able to obtain the necessary financing in the future. Moreover, NTA admits that equipment makers are allowing licensees to obtain necessary equipment without substantial down payments. *Id.* Thus, the lack of up-front financing does not appear to be a serious problem facing these licensees.

NTA also argues that finding available in-core channels has been a difficult and time consuming task for its licensees. In that connection, NTA claims there is a dearth of qualified engineers who can access OET 69 data to conduct the necessary frequency searches to find available in-core TV channels. C Spire questions that claim. To its knowledge OET 69 data is widely available and is regularly used by the numerous broadcast engineering firms practicing before the Commission. Even if accurate, however, that argument does not explain why in 10 plus years licensees could not locate an available in-core channel.

This is especially the case, given the completion of the DTV transition for full service stations. Those stations relinquished their companion analog facilities and converted to digital transmission by the summer of 2009. The DTV conversion thus opened up a plethora of in-core spectrum for LPTV and TV translators. It is thus difficult to understand how NTA's members have been unable to locate a suitable in-core channel on which to operate. Moreover, given that the bulk of NTA's members operate in rural areas without numerous full service TV stations -- *see* Letter to Representative Fred Upton from NTA, dated March 25, 2011, available at http://www.tvfmtranslators.com/information_links/Letter%20to%20Commerce%20Committee%20Re%20Repacking%20Mar2011.pdf -- it is difficult to understand why these stations have not been able to locate a suitable in-core TV channel.

Finally, to the extent that there simply exists no available spectrum for out-of-core LPTV and TV translator stations to which to move -- an argument that NTA significantly

does not advance -- that situation will not abate from relaxation of the December 31, 2011, deadline to move to an in-core TV channel.

While NTA has failed to support elimination of the December 31, 2011, date for stations to cease out-of-core transmission, good reason exists to enforce that deadline. 700 MHz licensees face numerous issues in building out their facilities. Resolving interference to and from television operations is one of those issues. This problem increases the cost and complexity of buildout. It requires the allocation of technical and legal resources that can better be directed toward providing the public speedy and quality service, for example.

Although it is true that the Commission has established a mechanism for moving LPTV and TV translators off out-of-core spectrum, that mechanism still requires the allocation of legal and technical resources to track and monitor these facilities. And as Verizon Wireless pointed out in this proceeding in its opposition to NTA's request for stay, its experience is that some LPTV licensees will not accept its assessment of interference and notice to terminate operation within 120 days, pursuant to Section 27.60 of the Commission's rules, and instead have requested extensions and/or additional engineering evidence that serves to further delay and increase the cost of commercial deployment. *See* Opposition to Motion for Stay (July 28, 2011). Hence, the existing remedy of 120 days' notice to LPTV and TV translator licensees, if continued after December 31, 2011, would result in increased cost to 700 MHz licensees and disrupt plans for timely build-out of broadband facilities. Purchasers of 700 MHz licensees should not be saddled with a continuing burden to clear their spectrum, rather the

Commission should adhere to its directive for a termination of analog LPTV and TV translator operations by December 31, 2011.

III. Conclusion.

In the *Second R&O* (at para. 29) the Commission concluded, based upon the record in this proceeding, that “the balance of interest has now changed [and] the rapid deployment of new commercial wireless and public safety facilities in the 700 MHz band now must take priority and will be best facilitated by clearing all remaining low power television stations from the 700 MHz band by December 31, 2011.” Nothing in the NTA Petition should cause the Commission to deviate from that finding.

For all of these reasons, the Commission should deny NTA’s Petition and affirm the December 31, 2011 date for LPTV and TV translators to vacate out-of-core spectrum.

Respectfully submitted,

**CELLULAR SOUTH, INC.
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November 30, 2011

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